

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2867 of 1986

Date of decision: 27-2-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
LB MANGANI

Versus

STATE OF GUJARAT

-----  
Appearance:

MR MANOJ N POPAT for Petitioner  
Ms. Harsha Devani for Respondent No. 1

-----  
CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/02/98

-----  
ORAL JUDGEMENT

The petitioner, an employee of the Directorate of

Printing & Stationery, Gujarat State, Ahmedabad, by this petition has prayed for relief of quashing and setting aside the order of reversion of the petitioner from the post of English Stenographer Grade-II (Personal Assistant) to the post of Senior Clerk and to allow him to permanently work on the same post which he is holding at present. Prayer has also been made for grant of interim relief.

2. This special civil application had come up for admission before this Court on 26th May, 1986. This court issued notice to the respondent returnable on 3rd June, 1986. It was ordered that in the meanwhile status quo be maintained. After service of notice to the respondents, the matter was placed for admission hearing in the court on 24th March, 1998, on which date the petition was admitted and interim relief granted earlier was ordered to continue.

3. Minimal facts of the case are that the petitioner entered in service of respondents when he was appointed as Clerk-typist (Junior Clerk) vide order dated 16-2-1965, which post he joined on 17-2-1965. Under order dated 1-12-1981 passed by the respondent, the petitioner was ordered to be promoted to officiate as Senior Clerk in the Printing Branch. While he was working as senior clerk, the petitioner was given additional charge of English Stenographer Grade II under order dated 29th January, 1982. The petitioner was appointed on the post of Personal Assistant in the time-scale of pay of Rs.475-800 on temporary basis under order dated 26th April, 1982. The petitioner admitted in the Special Civil Application that the post of English Stenographer Grade II and the post of Personal Assistant carry identical pay-scale. The petitioner has come up with the case that under order of the Government, dated 27th August, 1982 the post of English Stenographer Grade-II was ordered to be converted into the post of Gujarati Stenographer Grade-II. Thereafter the petitioner stated that on that ground the petitioner is sought to be disturbed by reverting him to the post of Senior Clerk. The petitioner has further averred in the special civil application that he has come to know that the said order is likely to be passed by the respondent, reverting him to the post of Senior Clerk since Gujarati Stenographer will be made available to the respondent by the General Administration Department.

4. Copy of the order under which the petitioner was sought to be reverted from the post of Personal Assistant to the post of Senior Clerk has not been produced on

record of the special civil application. So there are two aspects of the matter. Firstly, the order of reversion of the petitioner has been passed, but he avoided service of the same upon him and he filed this petition before this Court. Secondly, the petitioner has on apprehension of reversion filed this petition. But if we go by the prayer made by the petitioner in para 19(a) of the special civil application it is clear that in fact the order of reversion of the petitioner was passed reverting the petitioner from the post of Stenographer Grade II (Personal Assistant) to the post of Senior Clerk. Prayer has been made by the petitioner for quashing and setting aside the order of reversion. But copy of the order has not been produced along with the special civil application. The matter does not end here. Though this petition was filed in the year 1986, for all these years the petitioner has not cared to produce copy of the order of reversion before this court. This is a petition under Article 226 of the Constitution of India. In absence of the impugned order this court cannot quash and set aside the same. It is no more res integra that this court can quash and set aside an order which is filed on the record of the special civil application. No relief as prayed for by the petitioner in para 19(a) of the special civil application can be granted by this court. Reference in this respect may have to be made to the decision of this court in the case of Surinder Singh vs. Central Government and others, reported in (1986) 4 SCC 667. Though this petition deserves to be dismissed only on this ground, otherwise also on merits I do not find any case in favour of the petitioner. The petitioner was given temporary appointment to the post of English Stenographer Grade II (Personal Assistant). The Government has all the powers to convert this post into the post of Gujarati Stenographer Grade -II. Naturally the petitioner is not eligible for the post of Gujarati Stenographer Grade II, and he has to make room for the person who may man the post of Gujarati Stenographer Grade II. The post of Stenographer Grade II and the post of Personal Assistant, as per the petitioner, carry identical pay-scale. As per his own admission, petition was posted as Personal Assistant on ad hoc and temporary basis. It is the prerogative of the respondent State to convert the post. The petitioner who was holding the post of English Stenographer Grade II (Personal Assistant) only on temporary basis has not acquired any right on the post. In such eventuality, the respondent has not committed any error whatsoever in case the petitioner is reverted to the post of Senior Clerk.

5. In view of the aforesaid facts, I do not find any

illegality in the order of the respondent in reverting the petitioner to the post of Senior Clerk from the post of English Stenographer Grade II (Personal Assistant).

6. In the result this special civil application fails and the same is dismissed. Rule discharged. Interim relief granted earlier stands vacated. No order as to costs.

.....